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**Human Rights Council**
**Thirty-ninth session**
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Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[06 September 2018]

* Issued as received, in the language(s) of submission only.

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*1814959*

Please recycle

# Amnesty International welcomes the study on attacks against and the criminalization of indigenous human rights defenders

In this statement Amnesty International welcomes the initial findings by the United Nations Special Rapporteur on rights of indigenous peoples in her study on attacks against and the criminalization of Indigenous human rights defenders. The study also reflects on available prevention and protection measures.

**Root cause and drivers**

Amnesty International shares the Special Rapporteur's concerns about the drastic increase "in attacks and acts of violence against, criminalization of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging" partially led by corporate actors.[1] In August, Amnesty International issued an Urgent Action calling for threats against human rights defenders of the Temiar Indigenous people in Malaysia to cease. Temiar activists have been protesting the activities of a company developing durian and rubber clone projects on their ancestral lands without their free, prior and informed consent. The community leaders report that the company has issued physical threats and blocked access to the community with a vehicle blockade.[2]

The Special Rapporteur points out the detrimental effect of lack of land tenure for Indigenous communities, which also undermines their ability to defend their lands and territories. She has also documented how the disregard for Indigenous peoples' land rights "breeds tensions, subsequent violence and criminalization" where Indigenous Peoples become "trespassers or illegal occupants of their own lands".[3] Many of the projects take place without obtaining the free, prior and informed consent of Indigenous peoples, and without agreeing necessary compensation and remedies where appropriate. The study notes that states often fail to fulfil their obligation to "give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned"[4], either when Indigenous HRDs are accused of criminal activity,[5] or when they are seeking justice for crimes committed against them.[6]

The study points to the risks involved when conservation and climate change mitigation and adaptation projects are implemented on the ancestral lands of Indigenous peoples without obtaining their free, prior and informed consent. Amnesty International's research into violations of the land rights of the Sengwer of Embobut Forest, in Kenya, and threats and violence against Sengwer human rights defenders, shows how the root causes of the problem lay in the failure of the government, and of bilateral and multilateral donors, to ensure that the Sengwer were consulted on the design of projects. In so doing, they failed to learn from the same mistakes made in an earlier project funded by the World Bank.[7]

The Special Rapporteur identifies a significant increase in attacks against Indigenous human rights defenders in Brazil, Colombia, Ecuador, Guatemala, Honduras, India, Kenya, Mexico, Peru and the Philippines. In 2016, Amnesty International noted that In Guatemala, "between 2000 and August 2015 the defenders targeted for the largest number of attacks were those working on Indigenous rights and the environment".[8]

**Impact on women human rights defenders**

The study notes that "Smear campaigns tend to target indigenous women by spreading rumours that they are dishonourable women of poor reputation who violate indigenous traditions by engaging in public participation and advocacy on community concerns. The aim of such defamation is to disempower and alienate women from their families and communities."[9] In Guatemala, Amnesty International noted that Indigenous women HRDs were subjected

1 Paragraphs 4 and 27 ff.
2 Malaysia: Further Information: Threats against Indigenous Rights Defenders (https://www.amnesty.org/en/documents/asa28/8886/2018/en/)
3 Paragraphs 30 and 2.
4 United Nations Declaration on the Rights of Indigenous Peoples, Art. 40.
5 Paragraph 50
6 Paragraph 24.
7 Kenya: Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest (https://www.amnesty.org/en/documents/afr32/8340/2018/en/)
8 'We are Defending the Land with our Blood': Defenders of the Land, Territory and Environment in Honduras and Guatemala (AMR 01/4562/2016), p. 16.
9 Paragraph 78.

to gender-based slurs, and that as a result of the risks they faced due to their activism, some had received ultimatums from their partners, demanding that they cease their human rights work.[10]

**Impact of criminalization measures**

Importantly, the Special Rapporteur's study underlines the negative impacts that criminalization measures have on the capacity of Indigenous leaders and activists to defend the human rights of their communities, and hence by extension on their peoples' enjoyment of human rights. The study notes that "[t]he killings of indigenous leaders and community members cause irreparable harm and damage the social fabric of indigenous peoples. Such attacks are undertaken with the express intent to silence their voices, disrupt their organization and impede their ability to express their concerns over matters affecting their communities."[11] In January 2018, Amnesty International called for a thorough investigation into the killing of Mithun Chakma, an Indigenous activist in the Chittagong Hill Tracts of Bangladesh.[12] Prior to his killing, Mithun Chakma had had 11 criminal cases brought against him, mostly under the Information and Communication Technology (ICT) Act 2006, which criminalizes legitimate criticism of state actions.[13] He had stated that the regular court appearances hampered his ability to carry out his work as a human rights defender. No one has been charged or prosecuted for his murder.

**Protection mechanisms**

Amnesty International particularly welcomes the emphasis in the study on the value of protection programmes for human rights defenders, which "need to be culturally appropriate, consider gender aspects and be developed jointly with the communities concerned"[14]. These mechanisms can contribute to the fulfilment by states of the duty to take active measures to protect the right to life of Indigenous human rights defenders.

**Amnesty International recommends to the members and observers of the Human Rights Council to carefully study the report of the Special Rapporteur and to take immediate steps to ensure:**

- That all development, conservation and climate change mitigation and adaptation projects on lands and territories of Indigenous peoples be designed and implemented after full and effective consultations are held with the affected Indigenous peoples, and their free, prior and informed consent has been obtained, including with regard to strategies and measures to prevent and mitigate negative impacts on human rights defenders, agreeing necessary compensation and remedies where appropriate;

- That protection mechanisms for human rights defenders are developed, following consultations with and the obtaining of free, prior and informed consent of affected Indigenous peoples, drawing on best practice regarding community-based mechanisms such as Indigenous guards or culturally appropriate communications tools;

- Recognition and titling of Indigenous peoples' land rights before implementing projects on their land;

- The role of Indigenous peoples' customary legal systems in the adjudication of any accusations of crimes, either allegedly committed by or against Indigenous persons;

- That while the primary duty-bearer is the state, bilateral and multilateral donors should insist on the inclusion in projects funded by them of a strategy for the prevention, mitigation and remedying of negative impacts on human rights defenders, supported by an appropriate budget; such strategies must be designed after consulting with, and obtaining the free, prior and informed consent of, affected Indigenous peoples.

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10 'We are Defending the Land with our Blood'; p. 47.
11 Paragraph 71.
12 Bangladesh: Hold a Full Investigation into the Murder of Indigenous Human Rights Defender Mithun Chakma (https://www.amnesty.org/en/documents/asa13/7669/2018/en/)
13 Caught Between Fear and Repression: Attacks on Freedom of Expression in Bangladesh (https://www.amnesty.org/en/documents/asa13/6114/2017/en/)
14 Paragraph 82.

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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the China Society for Human Rights Studies (CSHRS), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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# Satisfaction Evaluation of the Human Rights in China (2015-2017) (abstract)

In 2015-2017, Evaluation Center of the Rule of Law, Renmin University of China evaluated the satisfaction of the human rights for three consecutive years. The 2015 assessment covers 28 provinces, municipalities and autonomous regions in the country. The 2016 and 2017 assessments cover 9 provinces each year. Each province is selected according to the high, medium and low level of economic development. The number of questionnaires per year is more than 4,000, and the total number of questionnaires in the three years is more than 12,000.

Satisfaction evaluation is different from the officially released objective indicators. It is undoubtedly the subjective evaluation of the respondents. It has a strong subjectivity and varies from person to person. Some people give a positive evaluation, while others may give negative evaluation, which is directly related to the experience and position of the respondent. However, if a kind of evaluation accounts for a large proportion, this subjective evaluation has big objective significance.

The criteria of satisfaction evaluation is composed of the rate and the score. The rating scale of the assessment is divided into five grades, namely, very good, relatively good, middle, relatively poor, and very poor, of which very good and relatively good are good evaluation, middle is middle evaluation, relatively poor and very poor are bad evaluation. The score is the satisfaction evaluation score. The satisfaction of the above five grades of very good, relatively good, middle, relatively poor and very poor is assigned 90, 80, 70, 60, 50 points respectively.

The human rights have got great progress for these three years. The good evaluation of the human rights as a whole increase from 38.9% in 2015 to 39.2% in 2016 and 47.7% in 2017; the score increase respectively from 70.7 to 71.2 and 73.0.

Among the indicators of various rights, they can divide into three categories in term of their rates and scores. The first category includes 3 indicators, namely, rights to persons, the right to healthcare, and right to education, whose rates of good evaluation are above 50%, and scores are about 75 points. The right to education and right to healthcare belong to the scope of the right to life, which have greatly improved with the reform and opening up. The personal right belongs to scope of political right, under which the three sub-indicators namely, the rights of the prisoners, the government's compensation for their own wrong behavior, and the due process when the police arrests people, their rates of good evaluation are over more than 50%, and the scores are all around 75 points. This is a great step forward in the field of personal rights in the human rights cause in China.

The second category includes 2 indicators, namely, right to expression and right to vote that also belong to scope of the political rights, whose rates of good evaluation are over 40% and the scores are just over 70 points. Their development is closely related with the progress of the rule of law in China.

The third category includes 2 indicators, namely, right to equality and the sponsorship fee from business by the government under the right to property, whose rates of good evaluation are about 20% and sore are under 70 points, which reflect the imbalances brought about by economic and social development and dissatisfaction of people, although the rate of good evaluation and score increased considerably.

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# Joint written statement* submitted by the China Society for Human Rights Studies (CSHRS), a non-governmental organization in special consultative status

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## Realizing the Right to Development Through Judicial Reform

The birth of RTD shifted the paradigm of international discourse from need, charity and aid towards human rights, shared responsibilities and cooperation. The implementation of RTD requires effective development policies at the national level, and equitable economic relations and a favorable economic environment at the international level. On the new theory view, RTD is a kind of integrated human right, charactered with integration feature and process-oriented approach, by the method of dialogue, in order to realize the idea equilibrium. To overcome the dilemma of implementing RTD should be based on overall strategic framework and improve the legal and judicial reform in the context of globalization. Especially for the developing countries, struggle to change the unequal international political and economic order is the core driving force of realizing RTD in the process of deepening dialogue and negotiations, which is reflected in the tide of legal and judicial reform. Therefore, it is necessary for us to change the strategy from legislative base to judicial focus, from one-way path to plural view, exploring the possibility of new model to realize the RTD in the context of comprehensive judicial reform.

Although the ideas and reflections of the RTD become the consensus after the failure of the law and development movement, whether the new round of law and the judicial reform movement can achieve a breakthrough to realize the RTD remains doubtable. But now we can be sure that the theme of "Realizing the RTD through judicial reform" has been increasingly recognized and accepted by the international community and nation-state. From "law in books" to "law in action", the key advocate of the sociological jurisprudence, also applies to the realization of RTD. We can't of excessive dependence on the Declaration of the RTD, fantasy it overnight from soft law into hard law, from no compulsory execution force into an legal obligation, from the international level compromise agreement into the domestic level of institutional law, from the wonderful idea into real benefit in a second time. On the basis of the existing basic consensus, We should seek the judicial channels though which the ought right can be transformed practical.

Firstly, Judicial reform on the basis of self-determination could promote the realization of RTD. Secondly, Drafting a Legal & Judicial Reform Framework Convention on the RTD seems to be the best option for accommodating the concerns of the different political groups, as it allows for a step-by-step approach. Finally, it is crucial that social ("grass roots") movements and NGOs, in the North as well as in the South, in their daily struggle, call for an effective implementation of the Declaration on the Right to Development and oppose all attempts, on the part of governments and the private (commercial) sector, to strip it of its meaning.

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# Joint written statement* submitted by the China Society for Human Rights Studies (CSHRS), a non-governmental organization in special consultative status

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# China's Human Rights Thought Advancing with the Times

1. **People-centered development thinking.** Different from various theological or heroic historical views, historical materialism regards the people as the main body of history. The people are the creators of history and the real heroes. History is born out of people's material life process and the process by which the people create material civilization, spiritual civilization and institutional civilization. The original heart and mission of the Communist Party of China is to seek happiness for the people and to revive the Chinese civilization. Taking the people as the center means that development purpose is for the people, development process depends on the people, and development results are shared by the people.

The people-centered development thinking is not an abstract, mysterious concept that stays in words and stops in ideas. The Chinese people have the most say in the human rights situation in China. China upholds the constitutional concept that all powers of the state belong to the people, and mobilizes and organizes the people most broadly to exercise state power through various people's congresses in accordance with the Constitution and laws, to manage state and social affairs, manage economics and culture through various channels and forms. Though joint construction, mutual enjoyment, and common development, Chinese people become the master of the country, society and their own destiny. Through the liberation and development of productive forces, China's socialist construction gradually realizes socialist modernization, gradually eliminates poverty, achieves common prosperity, and ultimately aims to continuously meet the people's growing needs for a better life and promote the all-round development of people. In China today, it has the largest body of human rights development in the world, and safeguarding people's rights has become the supreme goal of this largest developing country.

In recent years, CPC has clearly put forward the new development concept centered on the people, always placing the interests of the people in the supreme position, taking the people's longing for a better life as the goal of struggle, and constantly improving the level of respect and guarantee of the basic rights of the Chinese people. By the end of 2015, China has successfully completed the second target of the National Human Rights Action Plan, of which about 48% of the binding indicators and more than 50% of the people's livelihood indicators are completed ahead of schedule.

At the 19th National Congress of the CPC, principal of "people-centered" has become the core content of Xi Jinping's new era thought of socialism with Chinese characteristics. As the historical inheritance and innovative development of Marxist historical materialism, this idea is a summary of the experience of the CPC in leading China's revolution, construction, reform and development, and is also the fundamental guideline for the overall healthy and sustainable development of China's human rights cause. Guided by the people-centered development thinking, China's human rights cause is more closely integrated with economic, political, cultural, social, ecological civilization and party building, and the realization of people's rights of is more fully and balanced.

2. **Historical development view of human rights.** As a category of social history, human rights are a product of certain historical development conditions and stages. Marx advocates "real people" as the starting point and basic premise, understands human rights issues according to people's sociality and historical development, and opposes the old human rights concept based on the abstract "human" and "humanity" assumptions. In his view, "'human rights' is not a gift, but a historical one." "Rights can never go beyond the economic structure of society and the cultural development of society governed by economic structures."

The new great revolution of reform and opening up has broken the ill-conceived ideological concepts and the shortcomings of institutional mechanisms, the barriers of solidification of interests, absorbing the beneficial results of human civilization, and initially constructed a systematic system with complete systems, scientific norms, and effective operation. The development path of socialist human rights with Chinese characteristics has made China's human rights cause catch up with the times. As the chief architect of China's reform and opening up, Deng Xiaoping insisted on analyzing and studying the human rights issues in the contemporary world from a historical and developmental perspective, and opposed discussing human rights in an abstract or ambiguous way.

In the past 40 years , CPC and the China government have always insisted on treating human rights issues with historical, dialectical and developmental views. They have consciously innovated and developed in practice, and have always been committed to economic, political, social, cultural, etc. in a planned and systematic manner. In recent years, the Chinese government has clearly put forward the principle of "pragmatic advancement" of the development of human rights, emphasizing the integration of the universal principles of human rights with China's realities, and respecting the ideas and principles put forward by the Universal Declaration of Human Rights and relevant international human rights

instruments. In accordance with China's specific national conditions, human rights development strategy that suits China's actual conditions has been formulated, not blindly copy the human rights development model of other countries.

3. **The overall development concept of human rights.** Human rights are an interdependent and indivisible whole. Marx said: "In a comprehensive way, that is to say, as a whole person, it has its own comprehensive essence." According to the Vienna Declaration and Programme of Action, all human rights are universal and inseparable, interdependent and interrelated. All countries should treat all human rights in a fair and equal manner and promote and protect all human rights and fundamental freedoms.

In the past 40 years , China's human rights construction has adhered to the principle of interdependence and indivisibility of various human rights, coordinated, unified, and balanced development of human rights, and effectively promoted economic, social and cultural rights, civil and political rights, coordinated development of individual human rights and collective human rights.

The holistic development of human rights is embodied in the practice of comprehensive protection of human rights. In 2006, following the Constitutinal inclusion of the principal "Nation Respects and Guarantees Human Rights", "Respect and Guarantee of Human Rights and the Promotion of the All-round Development of Human Rights" strategy was first written into the 11th Five-Year Plan for National Economic and Social Development. In recent years, China has adopted the United Nations Declaration on the Right to Development as a guideline and adhered to the "development-based" implementation of the 2030 Agenda, vigorously promoting the coordinated development of the economy, society and the environment, and ensuring that everyone lives a life of dignity.

The holistic development of human rights is embodied in the construction of the socialist rule of law system with Chinese characteristics. Xi Jinping pointed out: "To comprehensively promote the rule of law involves many aspects. In practice, there must be a general grasp of the overall situation and the traction of all parties. This general grasp is to build a socialist rule of law system with Chinese characteristics. In this great process of advancing the rule of law, China has implemented human rights protection in all aspects of scientific legislation, strict law enforcement, fair justice, and law-abiding for the people.

**4. The common development initiative of human rights.** Human rights are an integral part of all civilizations, and all civilizations are equal and should be respected. China has always pursued common development and insisted that "It is necessary to let yourself live well and let others do well." China cherishes and respects the values and social ethics of different cultural backgrounds, and advocates that human rights should be mutually inclusive, mutually exchanged, learn from each other, and develop together.

Xi Jinping's "Building a Community of Human Destiny" initiative brings together the greatest common denominator of the people for peace, development and prosperity, and has become an important ideological guide and innovation highlight of China's human rights cause in the new era. In practice, human rights protection has gradually become an important part of building a community of human destiny. In January 2017, Xi Jinping delivered a speech at the UN Headquarters in Geneva, expounding in depth the propositions and concepts of jointly building a community of human destiny and promoting human rights protection through common development, which aroused enthusiastic response from all parties.

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# Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

# Australia's Record on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights of Aboriginal and Torres Strait Islander Peoples

### Australia's Candidacy for the Human Rights Council

During it candidacy for a position on the Human Rights Council, Australia built its campaign on five pillars:

- gender equality
- good governance
- freedom of expression
- the rights of Indigenous peoples
- strong national human rights institutions and capacity building.

Australia pledged to work towards a referendum to recognize Aboriginal and Torres Strait Islander peoples in the Australian Constitution as Australia's First Peoples.

Yet, the Australian Government dismissed out of hand the recommendations of the Referendum Council made following a process of consultation with Aboriginal and Torres Strait Islander peoples in 2016 and 2017. Yet another Parliamentary Select Committee was established to consider the recommendations of the council and former panels and committees. The ongoing referral of this matter for review and recommendation is the government's attempt at side-stepping the issue until it finally receives a recommendation it can support. It does not seem to comprehend that First Peoples will not support a referendum which does not involve substantive reform.

Australia pledged to continue to give practical effect to the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) and the World Conference on Indigenous Peoples (WCIP) Outcomes Document.

Yet Australia refuses to legislate to implement the Declaration into Australian Law in consultation and cooperation with Aboriginal and Torres Strait Islander peoples and refuses to develop, implement and monitor a national strategy or action plan to implement the Declaration.

The Special Rapporteur on the Rights of Indigenous peoples visited Australia in 2017 (A/HRC/36/46/Add.2) and made a number of recommendations aimed at making Australia's laws consistent with the Declaration. None has been accepted.

Australia committed to strengthening the capacity of the multilateral system to engage on issues affecting the world's Indigenous peoples. Yet, Australia engages in 'rights ritualism' by embracing the language of human rights but failing to implement the Declaration into domestic law and practices.

Australia committed to harnessing the knowledge and expertise of Indigenous Australians in the design and delivery of [its] aid programme.

Yet the Australian Government defunded the only national representative institution of Aboriginal and Torres Strait Islander peoples, the National Congress of Australia's First Peoples (National Congress) thus depriving it of its capacity to promote and protect and effectively advocate for the rights of Aboriginal and Torres Strait Islander peoples. While some funds have been provided for specific projects, Australia still refuses to properly resource the National Congress as an effective advocacy body for First Peoples.

Instead, it cites the government-appointed Indigenous Advisory Committee, its own Indigenous servicing network and half-baked consultation processes as evidence of its willingness to consult and cooperate with Aboriginal and Torres Strait Islander peoples.

Australia noted that independent national human rights institutions in a strong and robust civil society play a strong role in preserving and advancing human rights and stated that Australia is a strong advocate for strengthening the capacity of national human rights institutions to promote and protect human rights.

Yet Australia has cut funding to the Australian Human Rights Commission and, rather than acknowledge the counsel of the Commissioners, its Ministers publicly abuse those Commissioners who make findings which are not in line with government policy or political imperatives. Even worse, it seeks to whip up hysteria via its friends in the media in an attempt to control the Commission's work.

Since it was elected in 2013, the government has twice sought to remove or amend Section 18(c) the Racial Discrimination Act to remove the words "offend, insult, humiliate" on the basis that it imposes unreasonable restrictions on freedom of speech. Fortunately, its attempts have been blocked by the Senate, Australia's upper house of the Parliament but this cannot be guaranteed in future.

*Australia's Closing the Gap and Indigenous Advancement Strategies*

The Prime Minister's Closing the Gap Report 2018 implies that governments have acknowledged the ongoing legacy of trauma, grief and loss associated with colonisation.

However, for Aboriginal and Torres Strait Islander peoples, the process of colonisation continues. Until it is properly addressed, programmes to overcome disadvantage are doomed to failure. Governments will continue to implement policies and programmes aimed at assimilating our peoples.

The Closing the Gap (CTG) strategy has been in place for ten years. The government's CTG report 2018, is a classic example of "making a silk purse out of a sow's ear". It cites three of the seven targets being on track as an achievement! For a start, most of the targets are not aimed at 'closing the gap' as the title implies but at halving the gap. For instance, all of the targets on literacy, numeracy and reading, the target on employment are to halve the gaps within ten years (from 2009). None of these are on track. The primary target – aimed at closing the gap in life expectancy by 2031 – is not on track.

Introduced in 2014, the Indigenous Advancement Strategy (IAS) is the federal government's headline programme which underlies the CTG strategy. It has been a massive failure. Firstly, the government cut of more than $500m from the IAS in its first budget despite evidence that indicators of disadvantage were not improving and, in many instances, getting worse. Secondly, the government refused to consult with or listen to First Peoples' organisations, indeed it defunded the National Congress. In implementing a new tender-like process for service delivery, the IAS resulted in many First Peoples' communities and organisations being defunded.

The Special Rapporteur on the Rights of Indigenous Peoples noted in her report following her visit to Australia that the IAS has undermined the role of First Peoples' organisations in providing services for their communities and has had a devastating impact on their organisations – contrary to the principles of self-determination and participation. The Special Rapporteur recommended that the government revise the IAS and CTG strategies in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, the National Congress, the Indigenous Advisory Council and relevant peak indigenous organisations.

*Sustainable Development Goals*

Australia states in its first voluntary National Review1 on progress with the Sustainable Development Goals (SDGs) that "[t]he SDGs reflect the things that Australians value highly and seek to protect, like … our Aboriginal and Torres Strait Islander cultures and heritage."

Australia acknowledges that [many] people remain at risk of being left behind, including Aboriginal and Torres Strait Islander peoples.

Yet it does not seek to engage representatives of First Peoples in the 2030 Agenda. FAIRA is not aware of any mechanisms for governments and First Peoples' representatives to consider the goals and what is needed to achieve them.

Recent research by the Menzies School of Health Research reveals that one in 20 Aboriginal children at Maningrida, a remote community of around 3,000 in the Northern Territory, suffered from rheumatic heart disease – the highest known rate in the world. Another recent report revealed that 100% of all children in detention in the NT are Indigenous. FAIRA would like to report that these are aberrations. But they are not.

The Special Rapporteur on the Rights of Indigenous Peoples noted that the extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, is a major human rights concern. She warned that Aboriginal and Torres Strait Islander people will comprise 50% of the prison population by 2020 despite being only 3% of the overall population. She made a number of recommendations to address this scandal, echoing recommendations of the four treaty bodies which considered Australia's compliance with their treaties, CERD (CERD/C/AUS/CO/18-20), HRC (CCPR/C/AUS/CO/6), CESCR (E/C.12/AUS/CO/5) and CEDAW (CEDAW/C/AUS/CO/8) in 2017 and 2018.

Australia cannot continue to claim that its federal system prevents the national government from taking action, excusing itself from responsibility on the grounds that child protection, youth detention and the criminal justice systems are the purview of state and territory governments.

*Recommendations*

**Australia should in genuine consultation and cooperation with First Peoples' representatives:**

1. **Provide resources to, and commence genuine consultations with, the National Congress as the national representative body for Aboriginal and Torres Strait Islander Peoples;**
2. **Provide resources to and support capacity building and governance of First Peoples organisations;**
3. **Establish a mechanism to consider the best ways of legislating the Declaration into domestic law;**
4. **Develop, implement and monitor a national action plan to implement the Declaration;**
5. **Review the CTG strategy and the IAS based on the principles in the Declaration;**
6. **Restore the primary place of First Peoples organisations in the delivery of services to our communities;**
7. **Develop an effective strategy to achieve the Strategic Development Goals by 2030;**
8. **Develop and implement a strategy to implement the recommendations of the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody, the Royal Commission into Juvenile Detention in the Northern Territory and the various United Nations treaty bodies and special procedures;**
9. **Develop a transparent process for considering the reports and recommendations of the various United Nations treaty bodies and special procedures, including making Australia's responses available on line.**

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# Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

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# Annual Report of the High Commissioner for Human Rights on the Rights of Indigenous Peoples

The Foundation for Aboriginal and Islander Research Action (FAIRA) welcomes the 2018 report of the High Commissioner for Human Rights on the rights of indigenous peoples (A/HRC/39/37).

FAIRA notes with deep concern the report concludes that the human rights mechanisms continue to find that indigenous peoples of the world continue to face numerous significant human rights challenges including

- intimidation and reprisals against indigenous peoples' human rights defenders;
- lack of recognition and protection of indigenous peoples' land rights;
- insufficient effort to collect disaggregated data on indigenous peoples for the 2030 Agenda for Sustainable Development; and
- failure to ensure full and effective enjoyment of rights for indigenous peoples through domestic laws and policies and strategies.

The Human Rights Council must be deeply concerned that States still neglect their duty to provide fundamental affirmation of indigenous peoples' self-determination and the capacity to promote and protect their rights.

OHCHR ACTIVITIES

FAIRA notes the efforts by OHCHR at the country, regional and headquarter levels to engage with and involve indigenous peoples in all the international initiatives that affect them.

OHCHR offices have participated in engagement at the country level where development activities continue to be undertaken in indigenous peoples' lands and territories without sufficient regard for the principle of free, prior and informed consent. The report addresses OHCHR engagement in Central and South America, in Costa Rica, Colombia, Guatemala, Honduras, Mexico and Peru. OHCHR also has engaged with Cambodia and The Philippines in Asia, and Kenya and the Democratic Republic of the Congo in Africa.

1. **FAIRA requests that OHCHR in future provide wider information on OHCHR engagement involving indigenous peoples at regional and country levels in all regions of the world, especially with more direct attention with and engagement of Western European and Others Group members, such as Australia, Canada, New Zealand, United States of America and the Nordic countries.**

These particular nations tend to discourage external or independent engagement with indigenous peoples by utilising their political and economic affluence to maintain historical and exploitative laws and policies to the disadvantage of the indigenous peoples. While the UN offices in Suva, Fiji, have a role to promote and protect the rights of women throughout this region the office does not have engagement with the indigenous peoples nor any strategy to implement the UN Declaration on the Rights of Indigenous Peoples, the outcome document of the World Conference on Indigenous Peoples nor indigenous peoples' involvement in the Strategic Development Goals.

2. **FAIRA recommends that OHCHR immediately review its operations in the Pacific region by establishing an OHCHR office in Australia primarily to engage with indigenous peoples of the Pacific region to promote and protect the rights of the indigenous peoples of the Pacific region.**

HUMAN RIGHTS TREATIES AND INDIGENOUS PEOPLES

The report takes note that human rights treaty bodies continue to conclude in their periodic examination of country reports that the rights of indigenous peoples are overlooked and suppressed at the country levels, despite the international attention given to their status and rights.

Certain concluding observations regarding indigenous peoples from the treaty bodies have been grouped in this report under thematic headings such as Free, Prior and Informed Consent, Land Rights, Human Rights Defenders, Early Warning Mechanisms, Access to Justice, Agenda 2030, Social and Cultural Rights, and Violence Against Indigenous Women. This format has benefit in identifying major areas of concern, but at the same time the format confiscates whether progress is being made at country levels, where States are expected to take specific actions to promote and protect the rights of indigenous peoples.

Such actions should include to i) integrate the rights of indigenous peoples into laws, policies and programs of the state, ii) develop national action plans in coordination with the indigenous peoples, and iii) provide capacity to the indigenous peoples to prepare infrastructure for their development.

FAIRA notes that almost all human rights treaty bodies remain concerned about the situation of the indigenous peoples and continue to recommend adherence to the rights of Indigenous Peoples and non-discrimination. There is little evidence that the Declaration on the Rights of Indigenous Peoples is being implemented at the country level and it appears that states are not concerned about breaches of their obligations to respect the rights of indigenous peoples nor the risk of peer-level sanctions at the international level over their treatment of indigenous peoples.

PARTICIPATION OF INDIGENOUS PEOPLES IN UN PROCESSES

FAIRA notes the mechanism established at the United Nations for direct participation by indigenous peoples in international processes. The General Assembly resolution 71/321 encourages further efforts to enhance the participation on indigenous peoples. Such participation has been considered by the Human Rights Council in the review of the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Voluntary Fund for Indigenous Peoples.

However further achievement can be made if the Universal Periodic Review process was to be revised to improve access by indigenous peoples to contribute to and participate in the UPR examinations. This can be achieved by improving capacity for indigenous peoples to make submissions to the reviews and to be heard at the stage of reports to the Human Rights Council. At present the opportunity for statements by civil society during the UPR reports is very limited and it is unlikely that Indigenous peoples' representatives will get opportunity to speak when reports are being discussed. The opportunity for oral presentations at UPR from civil society is highly competitive and dominated by large NGOs that are well-resourced, based in Geneva and specialist in UPR procedure. Indigenous peoples are not heard though they remain the most invisible and oppressed groups in country situations.

3. **FAIRA recommends that during the UPR process where applicable one place in the list of speakers be allocated to a representative organisation from the indigenous peoples in that country.**

4. **FAIRA further recommends that indigenous persons should be considered for appointments to human rights treaty bodies and special mechanisms established by the Human Rights Council.**

INTERNATIONAL ACTION FOR RIGHTS OF INDIGENOUS PEOPLES

5. **FAIRA welcomes the appointment of Australia to the Human Rights Council and calls upon Australia to take pronounced steps at the global level towards implementation of the rights of indigenous peoples.**

Australia has already pledged, as its part in joining the Human Rights Council, to promote and protect the rights of indigenous peoples, and this pledge should now be followed up by real actions that resonate with indigenous peoples and states alike.

FAIRA asks Australia to take the lead on the Human Rights Council to have indigenous peoples and their inherent rights formally acknowledged by states, through specific legislation, charters and/or programs.

In some instances, like in contemporary Australia, this step is a difficult one to attempt when the major population groups remain ignorant of the injustices, unaware of the entrenched discrimination and have ingrained intolerances. But as Australia knows, non-discrimination, equality and justice are not always achieved through consensus or majority rule but by commitment to principles and adherence to the rule of law. Adherence to the rule of law requires strength in the face of opposition from vested interests, entrenched beliefs and blind ignorance.

Since the adoption of the UN Declaration on the Rights of Indigenous Peoples states have been too hesitant to change domestic laws and policies, thus leaving the indigenous populations trapped with the disadvantages of social rejection, denial of identity, poverty and forced assimilation. The Declaration is clear, in the preamble, in describing the historical and contemporary subjugation of the indigenous peoples around the world. In these same paragraphs the Declaration clearly affirms that the rights of indigenous peoples are a matter of international concern and that the international community has a leading role to play in implementing the rights of indigenous peoples.

Australia should now ask the Human Rights Council to play a more hands-on role. Australia has in previous years shown itself to be a leader on indigenous rights but slipped into the shadows after 1) fighting racism and inequality, through the Racial Discrimination Act, and 2) setting precedence for Land Rights, with the Northern Territory Land Rights Act and Aboriginal Heritage Act, and 3) respecting self-determination under the auspices of the Aboriginal and Torres Strait Islander Commission (ATSIC).

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**Human Rights Council**
**Thirty-ninth session**
10-28 September 2018
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Barzani Charity Foundation / BCF, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 September 2018]

* Issued as received, in the language(s) of submission only.

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Please recycle

# The divers society of Iraq must be protected, Iraq future is depend on future of Ethnic-religious Minorities

For thousand years Iraq have been a country of everyone, the people are minority today once they were majority in the country, the so called ethnic and religious communities in Iraq, which they are the concert foundation of the Iraqi society and the have been the important part of the Iraqi population and cultural heritage of the country now are facing an unprecedented challenge that threatens their continued existence in the country. Although the war against ISIS won at least militarily, nevertheless Iraq still in crisis period and the threat from extremist element not over yet.

Although the government of Iraq and the authority in Kurdistan region are doing their best to assure the minority group that it's their best interest to stay in Iraq rather than migrating to other countries, the action by the federal and regional authority is encouraging but without international community and human right group the capacity of the Government will be limited and it would be hard for Iraq to maintains its rich ethnic and religious diversity, there is no doubt that the ongoing conflict and political challenges will contribute further to insecurity and venerability of minority rights and will enhance further to depriving it of that diversity in their immediate future. Since 2003 many minority 'Christian and Eizidy in particular have sought asylum in other countries and the ISIS barbaric attack of Iraqi civilians have resulted in mass migration of minorities leaving behind thousands of years of heritage, culture of co-existence and prosperity once they enjoyed as result of mass migration the minority population dramatically decreased, therefore without immediate assistance by international community, many more will be willing to leave Iraq forever.

The barbaric attack and terror campaign committed by the ISIS, have been a biggest factor of decreasing minorities in Iraq and in particular the ISIS have impacted the Eizidy community which many of them being killed and many of female held captive, including young children held in sexual slavery. As today there are no more territory held by ISIS but yet many Eizidy women and children remain captive and their faith is not known. As the human right council in 2016 noted that "Allegations of genocide against the Yazidi and possibly other ethnic and religious communities must be fully investigated. Although since 2016 many session and meeting have been held to discuss the persecution of minority in Iraq, but the reality in the ground still remained as it is therefore the international community must also act decisively in cooperation and partnership with the central government of Iraq and Kurdistan region of Iraq KRG, international community in accordance with its commitments under international law is obliged to protect civilians and Barzani charity foundation/BCF is recommending to the human right council to encourage and assist Iraq to pursue reconciliation through the restorative justice among Iraqi society, which BCF believes that the restorative justice inline with other actions such as reconstruction, compensation and economic development and local power sharing, will stabilize the society of Iraq and will give a reason for minorities to stay and rebuild the shattered Iraq, which all together can make Iraq once a prosper and safer place for everyone.